

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

February 7, 2008

A meeting of the Board of Environmental Protection was held on Thursday, February 7, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Virginia Plummer, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Nancy Anderson, Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Sue Lessard, Virginia Plummer and Nancy Ziegler

M. Wing Goodale arrived at approximately ~~ 10:30 a.m.

Sue Lessard arrived at approximately ~~ 10:30 a.m.

Nancy Anderson departed at approximately ~~ 10:30a.m.

Absent: Matt Scott

<u>Staff:</u>	Bureau of Land and Water Quality	Richard Baker
	Bureau of Land and Water Quality	Hetty Richardson
	Bureau of Land and Water Quality	Brian Kavanah
	Bureau of Land and Water Quality	James Cassida
	Bureau of Air Quality	James Brooks
	Bureau of Air Quality	Andrea Lani
	Bureau of Air Quality	Eric Kennedy

Others: David Littell, Commissioner
Cindy Bertocci, BEP Executive Analyst
Peggy Bensinger, Assistant Attorney General (Androscoggin River Matter Only)
Jerry Reid, Assistant Attorney General
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 2:30 p.m.)

III. Regular Agenda

1. ANDROSCOGGIN RIVER APPEAL(s) // Verso, Jay ME 0001937 and W000623-5N-F-R; Rumford Paper Company ME 0002054 and W000955-5N-G-R; and FPL Energy Gulf Island Pond-Deer Rips Hydro Project #L-17100-33-O-N (objection to evidence during 1-17-08 BEP deliberations)

The Board voted (7-0-0-3) on a motion to deny the objection submitted by VERSO concerning evidence referred to by Department staff during the January 17, 2008 Board deliberations, in particular a model run relied upon in development of the May 11, 2006 draft proposed license modification for the Verso facility. The Board voted pursuant to 38 M.R.S.A. section 341-D(4) and 06-096 CMR Chapter 30 Special Rules for Hearings on Applications of Significant Public Interest.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board members Sue Lessard, M. Wing Goodale and Matt Scott were absent. [Note: Ms. Lessard and Mr. Goodale did not participate in the appeal proceeding.]

2. ANDROSCOGGIN RIVER APPEAL(s) // Verso, Jay ME 0001937 and W000623-5N-F-R; Rumford Paper Company ME 0002054 and W000955-5N-G-R; and FPL Energy Gulf Island Pond-Deer Rips Hydro Project #L-17100-33-O-N (Decision)

The Board voted (7-0-0-3) on a motion to adopt the February 7, 2008 revised draft proposed order for VERSO Paper ME 0001937 and W-000623-5N-F-R as modified by the Board on January 17, 2008. The Board voted pursuant to 38 M.R.S.A. section 341-D(4) and 06-096 CMR Chapter 30 Special Rules for Hearings on Applications of Significant Public Interest.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board members Sue Lessard, M. Wing Goodale and Matt Scott were absent. [Note: Ms. Lessard and Mr. Goodale did not participate in the appeal proceeding.]

The Board voted (7-0-0-3) on a motion to adopt the February 7, 2008 revised draft proposed order for Rumford Company Paper ME 0002054 and W-000955-5N-G-R as modified by the Board on January 17, 2008. The Board voted pursuant to 38 M.R.S.A. section 341-D(4) and 06-096 CMR Chapter 30 Special Rules for Hearings on Applications of Significant Public Interest.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board members Sue Lessard, M. Wing Goodale and Matt Scott were absent. [Note: Ms. Lessard and Mr. Goodale did not participate in the appeal proceeding.]

The Board voted (7-0-0-3) on a motion to adopt the February 7, 2008 revised draft proposed order for FPL Energy L-017100-33-O-N as modified by the Board on January 17, 2008. The Board voted pursuant to 38 M.R.S.A. section 341-D(4) and 06-096 CMR Chapter 30 Special Rules for Hearings on Applications of Significant Public Interest.

Board members Nancy Anderson, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, and Nancy Ziegler voted to support the motion. Board members Sue Lessard, M. Wing Goodale and Matt Scott were absent. [Note: Ms. Lessard and Mr. Goodale did not participate in the appeal proceeding.]

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner Littell reported the following:

Farewell to Nancy Anderson and Virginia Plummer Commissioner Littell thanked Nancy Anderson and Virginia Plummer for their extraordinary service to Maine citizens through their participation on the Board, and both were presented with a service plaque.

Budget: The Joint Standing Committee on Natural Resources voted unanimously to support the Governor's supplemental package. Immediately following there was another round of cuts and this 2nd package represents new cut numbers. These additional numbers will be considered by the Committee this afternoon. Commissioner Littell noted that he will provide additional detail following events from today at the Legislature.

In Lieu of Fee: The Department has established an "In Lieu Fee" wetland mitigation fund to receive wetland compensation fees when compensation for lost wetland functions is required and impacts cannot be avoided or further minimized. The program is currently in place and is being overseen by a third party administrator (The Nature Conservancy). The Department will report back to the Natural Resources Committee on this program and recommend expansion to include significant wildlife habitat. Commissioner Littell noted that Central Maine Power and the Dept. of Transportation are ready to participate in this program.

Legislative Bills: The Natural Resources Committee will hear testimony this afternoon on the vernal pool bill and a bill to grandfather gravel pits.

LD 810 is a proposal concerning solid waste which would require disposal and processing facilities to meet a 50% recycling goal. This bill is unlikely to pass out of committee since, as drafted, it would be a municipal mandate. At the request of Board member Ziegler, Commissioner Littell will provide a copy of this proposal to all Board members.

LD 1969 is a proposal to increase the per diem amount for the Board and Land Use Regulation Commission. The Natural Resources Committee conducted a public hearing and one work session. This initiative continues to move forward; however, this issue remains difficult because of the current budget circumstances.

Wind Power Task Force: The Governor's task force on wind power anticipates submitting its recommendations soon. In anticipation of having the final recommendations shortly, the Department has scheduled a briefing for the Board on February 21st. Commissioner Littell noted that there are 3 to 7 significant wind power projects expected within the next few years.

Board member Hilton asked about the 800 Megawatt plan for Aroostook County.

Commissioner Littell explained that the Department has not received any applications; however, he understands that there are projects in Aroostook and Lincoln counties and the Downeast area.

Board Jurisdiction: The Department received a request for Board licensing jurisdiction over a mobile home park in Arundel. This application is for a Natural Resource Protection Act Tier 1 wetland permit and a storm water permit. The preliminary determination by the Department is that this project does not meet the standards for Board licensing review.

Questions

Board member Sue Lessard asked about an attachment to a Legislative bill that would undo a 1989 limitation requirement for expansion of commercial solid waste facilities.

Commissioner Littell said that he was aware of some language, but that it is not currently attached to the Department's omnibus bill.

Board member Richard Gould asked about the status of the bill concerning use of plastic shopping bags.

Commissioner Littell noted that Representative Koffman had sponsored a bill that would address this matter; however the bill did not go forward this session. It is possible that this initiative may ultimately be included with another bill. The Department does not implement the state's recycling program; that effort is handled by the State Planning Office.

Board member Nancy Ziegler noted that other states are assessing a fee to use plastic bags as an approach to encourage the public to bring their own bags.

Board member Elizabeth Ehrenfeld asked about Legislative discussions concerning the outdoor wood boiler matter.

Commissioner Littell asked Jim Brooks to respond with an update on the recent hearings. Mr. Brooks is the Director of the Bureau of Air Quality and he noted that the general discussion focused on the following areas:

- *Setback alternatives – discussion about establishing a setback requirement from either the residence or property line;*
- *Address a gap in the rule concerning dealership stockpile of older boilers;*
- *Compliance dates – may be too aggressive to comply with emission standards;*
- *Possible elimination of interim standard; and*
- *Resolution of problem boilers.*

Commissioner Littell noted that with the Governor's support for the use of wood, wood pellets may become a fuel used in outdoor units. The Department may submit a separate bill that would require use of the newer, cleaner technology (high standard) for installation of these pellet units near schools.

Board member Wing Goodale asked for an update on the status of the toxics bill.

Commissioner Littell responded stating that there are two bills. Representative Pingree's bill (LD 2048) may be merged with the bill proposed by the Department. There is a possible hearing schedule for February and strong opposition is expected from the American Chemistry Council.

- B. COMMENTS FROM THE BEP CHAIR:** Chair Plummer noted that Board member Ernest Hilton has an update on the Quoddy Bay application.

Quoddy Bay: Presiding Officer Hilton advised that Quoddy Bay submitted the requested update letter in January. Mr. Hilton provided copies of the letter noting that Quoddy continues to request that the Board postpone consideration of its applications. Mr. Hilton also noted that Quoddy has signed an agreement with the State Planning Office extending the time for the CZMA consistency determination until January 2009.

Board member Ziegler commented that it might be appropriate at some point for the applicant to brief the full Board on the status of the application.

C. EXECUTIVE ANALYST COMMENTS:

Reports to Legislature: Ms. Bertocci reported that the Joint Standing Committees on Marine Resources and Natural Resources have received the Board's report concerning the petition process as well as DEP's and DMR's report on passage of native diadromous fish.

Summary of 2007 activities: Board members were asked to provide their comments on the draft report. It was noted that this report will benefit new committee members in understanding the composition of the Board and its work.

- D. BOARD CALENDAR:** Reviewed
- E. DEPARTMENTAL ORDERS:** None
- F. EXECUTIVE SESSION:** None

II CONSENT AGENDA ITEMS

Board voted (8-0-0-2) to approve consent agenda items number 1, 2, 3, 4, 5, and 6 as presented.

Board members Ernest Hilton, Elizabeth Ehrenfeld, Wing Goodale, Richard Gould, Don Guimond, Virginia Plummer, Sue Lessard and Nancy Ziegler voted to support the motion. Board members Nancy Anderson and Matt Scott were absent.

1. ALVIN J. COLEMAN & SON, INC., Augusta - Administrative Consent Agreement (BAQ)
2. DAVID ABBOTT, Strong – Administrative Consent Agreement and Enforcement Order / NRPA, E&S (BLWQ)
3. W/S ELLSWORTH PROPERTIES LLC, and W/S ACADIA CROSSING LLC, and SARGENT CORPORATION, Ellsworth - Administrative Consent Agreement and Enforcement Order / NRPA, Site (BLWQ)
4. MADELYN CHRISTOPHER and RALPH WARNER, Pownal - Administrative Consent Agreement and Enforcement Order / NRPA (BLWQ)
5. LARRY ROWELL, Hartland - Administrative Consent Agreement and Enforcement Order / NRPA (BLWQ)
6. HALLOWELL HOUSE, LLC, Hallowell - Administrative Consent Agreement (BRWM)

III. Regular Agenda

1. MUNICIPALITY OF STEUBEN CHAPTER 1262 / AMENDMENT OF SHORELAND ZONING MAP
Staff: Richard Baker, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to post amendments to Chapter 1262 Municipality of Steuben Shoreland Zoning Map to a 30-day written public comment period to obtain public input on the rezoning of lots 5 through 9 of the “Tide Mill at Dyer Harbor” subdivision to remove the “Special Flood Hazard Area” designation. The Board voted pursuant to 38 M.R.S.A. Section 341-D(1-B).

Board members Ernest Hilton, Wing Goodale, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Virginia Plummer, Sue Lessard and Nancy Ziegler voted to support the motion. Board members Nancy Anderson and Matt Scott were absent.

2. CHAPTER 1000, STATE OF MAINE GUIDELINES FOR MUNICIPAL SHORELAND ZONING ORDINANCES / EXTENSION OF DEADLINE FOR MUNICIPALITIES (decision on one-year time extension of deadline)

Staff: Richard Baker, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to adopt a time extension and establish a new deadline of July 1, 2009 for municipalities to update their shoreland zoning ordinances to be consistent with the Department's Guidelines. Ordinance revisions will reflect the updated waterfowl/wading bird habitat data to be provided by the Department of Inland Fisheries and Wildlife by October 31, 2008. The Board voted pursuant to 38 M.R.S.A. Section 341-D(1-B).

Board members Ernest Hilton, Wing Goodale, Elizabeth Ehrenfeld, Richard Gould, Don Guimond, Virginia Plummer, Sue Lessard and Nancy Ziegler voted to support the motion. Board members Nancy Anderson and Matt Scott were absent.

3. CHAPTER 305, PERMIT BY RULE STANDARDS / AMENDMENTS (adoption)

Staff: Hetty Richardson, Bureau of Land and Water Quality

The Board voted (8-0-0-2) on a motion to adopt amendments to Chapter 305, Permit By Rule Standards, Section 20 which comply with statutory requirements outlined in PL 2007, Chapter 290(16) for activities consisting solely of cutting or removal of vegetation within shorebird roosting and feeding buffer areas and expansion of up to 10% of an existing development area within inland waterfowl and wading bird habitat. The Board voted pursuant to 38 M.R.S.A. Section 341-D(1-B).

Board members Elizabeth Ehrenfeld, Wing Goodale, Richard Gould, Don Guimond, Ernest Hilton, Virginia Plummer, Nancy Ziegler and Sue Lessard voted to support the motion. Board members Nancy Anderson and Matt Scott were absent.

4. DAVID AND VALERIE HOFFMAN / Natural Resources Protection Act Department Permit Denial L-022943-4E-A-N for construction of pier, ramp and float (appeal by David and Valerie Hoffman)

Staff: James Cassida, Bureau of Land and Water Quality

The Board voted (7-0-1-2) on a motion to adopt the draft proposed Board Order which approves the construction of a pier, ramp and float with conditions that minimize the visual impact of the structure. The Board voted pursuant to 38 M.R.S.A. Section 341-D(4) and 06-096 CMR Chapter 2, Rules Concerning the Processing of Applications and Other Administrative Matters.

Board members Ernest Hilton, Wing Goodale, Richard Gould, Don Guimond, Virginia Plummer, Sue Lessard and Nancy Ziegler voted to support the motion. Board member Elizabeth Ehrenfeld abstained. Board members Nancy Anderson and Matt Scott were absent.

INFORMATIONAL SESSION

- Regional Greenhouse Gas Initiative // Overview of provisions to be incorporated in proposed Chapter 158, Auction Rules and tentative schedule
 - James P. Brooks, Director of Bureau of Air Quality
 - Andrea Lani, Environmental Specialist
 - Eric Kennedy, Environmental Specialist

The Department provided a briefing which included the following components:

- RGGI Program Review
- Auction Goals & Principles
- Regional Allowance Auctions
- Auction Process Timeline
- Auction Participation Requirements
- Auction Process Example
- Emissions Allowance Tracking System
- Auction Notice
- Competitive Bidding
- Regional Process Update
- Auction Rule Adoption Schedule

Next Regular Meeting – Thursday, February 21, 2008 – Holiday Inn / Ground Round